

336, 365 and 368. Intent of this section. Probate not procured by fraud; failure to notify brother, etc. *Snyder v. Snyder*, 142 Md. 294.

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483.

See notes to secs. 353 and 359.

An. Code, 1924, sec. 358. 1912, sec. 348. 1904, sec. 341. 1888, sec. 332. 1798, ch. 101, sub-ch. 2, sec. 13.

**363.** If the probate of any will or codicil be taken as aforesaid without contest, any person, before letters testamentary or of administration with a copy of the will shall be actually granted, may file a petition to the court praying that the case may be again examined and heard; and thereupon the orphans' court shall delay the granting of letters until a decision shall be had on the petition, and in case the letters shall have been granted, and any person shall file such petition, and the court on hearing both sides—that is to say, the petitioner and the grantee of such letters—shall decide against the probate, the letters aforesaid shall be revoked, and the power of the party under the letters shall cease; and the said will shall not be proved in any other county, unless the decision be reversed on appeal.

Where a will has been probated after contest, such action is final and same questions cannot be raised again in orphans' court by other parties, in absence of fraud or collusion in probate. How and when a question of fraud or collusion must be raised. *Pleasants v. McKenney*, 109 Md. 292; *McCambridge v. Walraven*, 88 Md. 381; *Worthington v. Gittings*, 56 Md. 547.

Any person having an interest in estate in case the probate already granted should be revoked may file a petition for that purpose within three years allowed by sec. 357, although letters of administration have been granted. *Home for the Aged v. Bantz*, 106 Md. 151.

Where a caveat is dismissed before being tried and will thereafter probated without contest, it is probated in common form, and this section applies. *Price v. Moore*, 21 Md. 373. And see *Levy v. Levy*, 28 Md. 32.

Where a will is presented with a petition stating that it is not will of deceased, and only testimony on behalf of those assailing will is heard, those in favor of will being given no opportunity to be heard, orphans' court is without jurisdiction to decide question of probate. *Emmert v. Stouffer*, 64 Md. 553.

For a petition filed under this section praying that probate be again examined, see *Harris v. Pue*, 39 Md. 540.

This section referred to in construing sec. 38—see notes thereto. *Pacy v. Cosgrove*, 113 Md. 319.

This section construed in connection with sec. 258—see notes thereto. *Stockbridge v. Smith*, 64 Md. 106.

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483.

See notes to secs. 353, 359 and 360.

An. Code, 1924, sec. 359. 1912, sec. 349. 1904, sec. 342. 1888, sec. 333. 1798, ch. 101, sub-ch. 2, sec. 11.

**364.** In case the adjudication of the orphans' court to whom any will or codicil shall be exhibited for probate shall be against the said will or codicil, it shall not be received for probate in any other county.

It does not follow from this section that parties not bound by order refusing probate are excluded thereafter from probating will in same county. *Emmert v. Stouffer*, 64 Md. 559 (dissenting opinion).

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483.

See notes to sec. 353.

An. Code, 1924, sec. 360. 1912, sec. 350. 1904, sec. 343. 1888, sec. 334. 1831, ch. 315, sec. 1. 1888, ch. 453. 1890, ch. 416. 1892, ch. 81.

**365.** In proving a will or codicil all the witnesses thereto shall be examined if their attendance can be had, and the register of wills of any county or of the city of Baltimore where any will shall have been filed for probate, or any deputy of his when directed so to do by an order of the orphans' court may examine and take the deposition of any or all of the